

TITLE 326 AIR POLLUTION CONTROL BOARD**CONTINUATION OF FIRST NOTICE OF COMMENT PERIOD**

LSA Document #07-286

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING PERMIT FEES**PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to [326 IAC 2](#) concerning permit fees and related permit requirements. The First Notice of Comment Period was published on May 30, 2007 (DIN: [20070530-IR-326070286FNA](#)). That notice included a request for comments on amending the Title V permit program rules to be consistent with the Air Pollution Control Board action that increased those permit fees by 25%, and on increasing all other non-Title V fees by 25%. That comment period has ended, and IDEM is no longer proposing increasing all other non-Title V fees. However, IDEM has identified an additional option for this rulemaking. This Continuation of First Notice of Comment Period provides information about adding fees for certain woodworking operations in [326 IAC 2-9-4](#) and requests comments on the addition of these fees.

HISTORY

First Notice of Comment Period: May 30, 2007, Indiana Register (DIN: [20070530-IR-326 070286FNA](#)).

CITATIONS AFFECTED: [326 IAC 2-1.1-7](#); [326 IAC 2-7](#); [326 IAC 2-8](#); [326 IAC 2-9](#); [326 IAC 2-12](#); [326 IAC 2-13](#).

AUTHORITY: [IC 13-14-8](#); [IC 13-15](#); [IC 13-16](#); [IC 13-17-3-4](#); [IC 13-17-3-10](#); [IC 13-17-3-11](#); [IC 13-17-8](#).

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING**Basic Purpose and Background**

Title V of the Clean Air Act (CAA) requires that state air permitting programs be supported by fees sufficient to cover all reasonable direct and indirect costs required to develop and administer the air permit program in accordance with federal requirements. IDEM implemented Indiana's general air permit program fees in [326 IAC 2-1.1-7](#), fees for the Part 70 permit program in [326 IAC 2-7](#), fees for federally enforceable state operating permits (FESOPs) in [326 IAC 2-8](#), source specific operating agreement (SSOA) program fees in [326 IAC 2-9](#), fees for general permits in [326 IAC 2-12](#), and fees for interim approvals in [326 IAC 2-13](#).

In the First Notice of Comment Period, IDEM proposed to do the following: revise the Title V permit program fees; add existing transition fees to the permitting rules and add new transition options and fees; and make other fee-related changes for clarity and consistency. With this Continuation of First Notice of Comment Period, IDEM has identified two additional options for consideration in this rulemaking.

IDEM permitting staff noted that, in the SSOA section for woodworking operations at [326 IAC 2-9-4](#), two of the five types of operations do not pay an application fee. Currently, all SSOA categories pay an application fee of \$625, except for woodworking operations under [326 IAC 2-9-4\(c\)](#) and [326 IAC 2-9-4\(d\)](#).

Under [326 IAC 2-9-4](#) there are five categories of woodworking operations that may apply for a SSOA. The five categories are differentiated by the air flow and grain loading required of the control device. IDEM permitting staff use the following table to help determine under which category the woodworking operation will be issued a SSOA:

Option	Rule	Air Flow	Grain Loading	Current Fee	Proposed Fee	Approximate Limited Tons/twelve month period
1	326 IAC 2-9-4(b)	400,000 acfm	0.001 gr/acf	625	625	15
2	327 IAC 2-9-4(c)	125,000 cfm	0.003 gr/dscf	0	625	14
3	328 IAC 2-9-4(d)	40,000 cfm	0.01 gr/dscf	0	625	15
4	329 IAC 2-9-4(e)	125,000 cfm	0.01 gr/dscf	625	625	47
5	330 IAC 2-9-4(f)	65,000 cfm	0.01 gr/dscf	625	625	24

Methodology

Approximate Limited Tons/twelve month period = (airflow) (dscfm) × (grain loading) (gr/dscf) × 60 (minutes/hour) × 8,760 (hours/12 month period) / (7,000 (grains/pound) × 2,000 (pounds/ton)).

Assumes:

1. acfm = dscfm
2. cfm = dscfm

3. gr/acf = gr/dscf

IDEM is proposing to add a fee of \$625 for woodworking operations that obtain a SSOA under [326 IAC 2-9-4\(c\)](#) or [326 IAC 2-9-4\(d\)](#). The department uses the same amount of resources when processing a woodworking SSOA application under [326 IAC 2-9-4\(b\)](#) through [326 IAC 2-9-4\(f\)](#). By not requiring woodworking operations under subsection (c) or (d) to pay a one-time application fee, the current rule results in inequitable treatment of these operations. Amending the rule language would ensure that all woodworking operations are treated equally.

Fees collected from the SSOA program are part of the Title V Permit Trust Fund that is federally required to support the state's air permitting program. Sources regulated under a SSOA could otherwise qualify for a more costly Title V permit. The proposed fees will apply to those woodworking operations obtaining a new SSOA. Adding these fees will provide consistency with fees collected from all other SSOA categories under [326 IAC 2-9-4](#).

Finally, IDEM is proposing to clarify the applicability of [326 IAC 2-9-4](#) for the five categories of woodworking operations. The current rule language is unclear and results in confusion for permitting staff and sources subject to the rule.

IDEM is seeking comments on adding an application fee of \$625 for woodworking operations that obtain a SSOA under [326 IAC 2-9-4\(c\)](#) or [326 IAC 2-9-4\(d\)](#) and amending the rule language to clarify the applicability of [326 IAC 2-9-4](#). Upon completion, this rule will be submitted to U.S. EPA for approval into the state implementation plan.

Alternatives to Be Considered Within the Rulemaking

The First Notice of Comment Period was published on May 30, 2007 (DIN: [20070530-IR-326070286FNA](#)) and included five alternatives for which comments were received. This Continuation of First Notice of Comment Period adds two additional alternatives to be considered.

Alternative 6. Add fees for woodworking operations that obtain a SSOA under [326 IAC 2-9-4\(c\)](#) or [326 IAC 2-9-4\(d\)](#).

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? No, however, federal law requires that Indiana charge air permit program fees sufficient to cover the direct and indirect costs of administering the state's air permitting program.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Alternative 7. Amend the rule language in [326 IAC 2-9-4](#) to clarify the applicability for the five categories of woodworking operations. Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.

- Is this alternative imposed by federal law or is there a comparable federal law? No.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Applicable Federal Law

Section 502(b)(3)(A) of the CAA requires that state Title V air permitting programs be supported by fees sufficient to cover all reasonable direct and indirect costs required to develop and administer the air permit program in accordance with federal requirements.

Potential Fiscal Impact

Potential Fiscal Impact of Alternative 6. This alternative will have a fiscal impact of \$625 for each woodworking operation that applies for a SSOA under [326 IAC 2-9-4\(c\)](#) or [326 IAC 2-9-4\(d\)](#). Currently there are approximately 46 woodworking operations under [326 IAC 2-9-4](#). Assuming that the woodworking operations are distributed evenly under [326 IAC 2-9-4\(b\)](#) through [326 IAC 2-9-4\(f\)](#), approximately 18 operations or 40% of woodworking operations would have a SSOA under subsection (c) or (d). Therefore, IDEM assumes that approximately 40% of new applications for a woodworking SSOA under [326 IAC 2-9-4](#) would be affected by the proposed application fee.

Potential Fiscal Impact of Alternative 7. No fiscal impact. This alternative is a clarification of current rule language.

Small Business Assistance Information

IDEM established a compliance and technical assistance (CTAP) program under [IC 13-28-3](#). The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with [IC 13-28-3](#) and [IC 13-28-5](#), there is a small business assistance program ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP program, the monthly CTAP newsletter, and other resources available can be found at:

<http://www.in.gov/idem/4108.htm>

Small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Alison Surface
IDEM Compliance and Technical Assistance Program - OPPTA
MC 60-04 IGCS W041
100 North Senate Avenue

Indianapolis, IN 46204-2251
(317) 232-8172 or (800) 988-7901
ctap@idem.in.gov

The Small Business Assistance Program Ombudsman is:

Brad Baughn
IDEM Small Business Assistance Program Ombudsman
MC 50-01 IGCN 1307
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 234-3386
bbaughn@idem.in.gov

Public Participation and Workgroup Information

At this time, no workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Amy Smith, Rule and State Implementation Plan Development Section, Office of Air Quality at (317) 233-8628 or (800) 451-6027 (in Indiana).

STATUTORY AND REGULATORY REQUIREMENTS

[IC 13-14-8-4](#) requires the board to consider the following factors in promulgating rules:

- (1) All existing physical conditions and the character of the area affected.
- (2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- (3) Zoning classifications.
- (4) The nature of the existing air quality or existing water quality, as the case may be.
- (5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- (6) Economic reasonableness of measuring or reducing any particular type of pollution.
- (7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to human, plant, animal, or aquatic life or to the reasonable enjoyment of life and property.

REQUEST FOR PUBLIC COMMENTS

At this time, IDEM solicits the following:

- (1) The submission of alternative ways to achieve the purpose of the rule.
- (2) The submission of suggestions for the development of draft rule language.
- (3) The submission of comments on the potential fiscal impact of the application fees for woodworking operations obtaining a new SSOA under [326 IAC 2-9-4\(c\)](#) or [326 IAC 2-9-4\(d\)](#).

Mailed comments should be addressed to:

#07-286 (APCB) Permit Fees
Amy Smith Mail Code 61-50
Rule and State Implementation Plan Development Section
Office of Air Quality
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204

Hand delivered comments will be accepted by the IDEM receptionist on duty at the tenth floor reception desk, Office of Air Quality, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-5967, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rule and State Implementation Plan Development Section at (317) 234-6530.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by July 30, 2010.

Additional information regarding this action may be obtained from Amy Smith, Rule and State Implementation Plan Development Section, Office of Air Quality, (317) 233-8628 or (800) 451-6027 (in Indiana).

Scott Deloney, Chief
Air Programs Branch
Office of Air Quality

Posted: 06/30/2010 by Legislative Services Agency
An [html](#) version of this document.